MSS

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**APPELLATE SIDE**

CRIMINAL APPEAL NO. 132 OF 1996

1. RAJARAM LAXMAN YADAV )
2. BAPU PANDURANG YADAV )
3. SANJAY SHIVAJI YADAV )
All r/o Arjunwada, )
Taluka Radhanagari )
Dist. Kolhapur ) APPELLANTS
(Org.Accused 1,2&5)

VERSUS

THE STATE OF MAHARASHTRA ) RESPONDENT

Mr. Rahul Kate for appellants

Smt. V. R. Bhosale, APP

**CORAM**: **SMT. RANJANA DESAI, J.**

**DATE**: OCTOBER 15, 2007.

ORAL JUDGMENT:

. The appellants are original accused 1, 2 and 5. They were tried along with two others in the court of the Additional Sessions Judge at Kolhapur, in Sessions Case No. 164 of 1993 for offences under Sections 147, 148, 307 r/w 149, 326 r/w 149, and 323 r/w 149 of the Indian Penal Code. Juvenile Baccharam who was also charged with the same

offences was tried separately before the Juvenile Court in Juvenile Case No. 32 of 1993. By the impugned judgment and order the learned Sessions Judge convicted accused 1 Rajaram, for offence under Section 324 of the I.P.C. and sentenced him to undergo R.I. for 2 years. He convicted accused 2 Bapu for the offence under Section 326 IPC and sentenced him to suffer R.I. for 3 years. Accused 5 was found guilty of offence under Section 323 I.P.C. and was sentenced to pay fine of Rs.500/-. In default he has to undergo S.I. for 3 months. All the accused were acquitted of offences under Sections 147, 148, 307 read with 149 of the I.P.C. Accused 3 Raghunath and accused 4 Ramchandra were acquitted of all the offences. Being aggrieved by the said judgment and order, original accused 1,2 and 5 have preferred this appeal. For the sake of convenience I shall refer to the accused as per their description in the trial court.

2. It would be advantageous to begin with the facts of the case.

. Maruti Yadav and others are the tenants of a portion of field Gat No. 633 of Arjunwada. On 22/4/93 at about 2 p.m. Hirabai, the mother of

complainant PW 4 Bajirao went to the field adjoining this land. That field belongs to the accused. On the boundary which runs between the two fields there are trees. According to the prosecution Hirabai asked accused 1 Rajaram, his wife and others as to why they did not cut the trees. Accused 4 Ramchandra hurled a stone at the chest of Hirabai. Hirabai went and narrated the incident to her sons Bajirao and Maruti. Bajirao and Maruti went to the field of the accused Shivaji and Baccharam were present there. Bajirao asked them why a stone was hurled at his mother. Shivaji asked him as to who he was to question him. Shivaji assaulted on the head of Bajirao and Maruti with iron bar. Accused 1 dealt axe blow on the neck of Bajirao, Accused 5 Sanjay dealt a blow with iron bar on the arm of Bajirao. Accused 2 Bapu attacked with the spade on the face of Bajirao consequently his 3 teeth were dislocated. From there Bajirao and Maruti were taken to CPR Hospital, Kolhapur.

3. PW 11 Head Constable Shinde received letters Exh.-55 and 56 about Bajirao and Maruti in the police chowki in CPR Hospital, Kolhapur. He then arranged for recording of dying declaration of

Bajirao and Maruti. On 23/4/93 Head Constable Shinde recorded the report of Bajirao which is at Exh.-23. PW 8 ASI Bhiwate registered the offence vide C.R. No. 53 of 1993 on 23/4/93. On the basis of the report investigation was started. After investigation the accused came to be charged as aforesaid.

4. In support of its case, the prosecution examined eleven witnesses. The prosecution examined PW 4 Bajirao chougule and PW 6 Maruti Chougule the injured witnesses. The prosecution examined PW 5 Dr. Khot, who has deposed about the injuries sustained by Maruti and Bajirao. The details of investigation were given by PW 9 API Patil.

5. The defence of the accused was one of denial. The accused filed their written statement which is at Exh.-59. According to the accused Bajirao and his family members insisted that they should cut the trees standing on the boundary of the two fields. As they did not cut the trees they were annoyed with them. Deceased Shivaji, who was working as a driver in Bidri Sugar Factory used to be on duty upto 5 p.m. After his duty hours he

used to return home through his field Gat No. 633 known as Palak. On 22/4/93 Hirabai collected the leaves, put them around the trunk of a mango tree of the accused standing on the boundary and set the leaves on fire. There was a quarrel between Indubai, wife of accused 1 Rajaram and Hirabai. At about 5-30 to 6 p.m. Shivaji was coming by the pedestrian way on the boundary between the 2 fields. At that time Bajirao, Maruti, Balwant and Pandurang Chougule went there and accosted Shivaji. Bajirao gave a slap on the face of Shivaji. Shivaji fell down in his field. While he was rising Maruti dealt two axe blows on his head. The accused went running there. They were also assaulted.

6. After perusing the evidence on record the learned Sessions Judge convicted accused 1, 2 and 5 as aforesaid and hence they have preferred this appeal.

7. I have heard Mr. Kate, learned counsel appearing for the appellants-accused. He submitted that the learned Sessions Judge erred in convicting the accused on the basis of evidence, which is wholly unsatisfactory. He submitted that the

evidence of Bajirao and Maruti is inconsistent. The learned counsel contended that no independent witness was examined by the prosecution. He submitted that admittedly the relations between the two sides were strained and, therefore, possibility of false implication cannot be ruled out. Mr. Kate submitted that admittedly the incident had taken place in the field of the accused. The prosecution witnesses were, therefore, aggressors and the injuries suffered by the accused indicate that they were assaulted. He submitted that Shivaji was badly assaulted by the accused and he succumbed to the injuries. Therefore, even if this court comes to the conclusion that the accused did attack the prosecution witnesses on the facts of this case it must be held that the accused did so in exercise of their right of private defence. The learned counsel urged that in the circumstances, the impugned judgment and order of conviction and sentence be set aside and the accused be acquitted.

8. As against this Mrs. Bhosale, the learned APP submitted that no interference is necessary with the impugned judgment and order. She submitted that prosecution witnesses are injured witnesses. Bajirao had sustained as many as thirteen injuries

and Maruti has sustained as many as three injuries. The injuries are serious. There is no reason for the injured witnesses to implicate an innocent person as their assailant. The learned APP submitted that minor discrepancies in the evidence of these witnesses should not persuade this court to discard their evidence in toto. She submitted that, therefore, the impugned judgment and order be confirmed and the appeal be dismissed.

9. The fact that the relations between the accused and the deceased were strained can hardly be disputed. The field belonging to the accused and the field belonging to the complainant and his brothers adjoin each other. On the border of these fields, there are trees. The accused wanted the prosecution witnesses to cut these trees. The prosecution witnesses were not willing to do so therefore, there was some friction between the two sides prior to the incident in question. Hirabai, the mother of Bajirao had asked accused 1 Rajaram and his wife as to why they were not cutting the trees. PW 4 Rajaram had hurled a stone at Hirabai. Hirabai had gone and informed her sons about it and thereafter PW 4 Bajirao and PW 6 Maruti had gone to the field of Shivaji and his brothers. According

to PW 4 Bajirao, he asked Shivaji as to why a stone was hurled at his mother. Shivaji asked him as to who he was to question him. Thereafter Shivaji is said to have attacked Bajirao and Maruti on their heads with hard and blunt article. Accused 1 dealt blow on the neck of Bajirao with iron bar. Accused 5 Sanjay dealt blow with iron bar on the arm of Bajirao. Accused 2 Bapu assaulted on the face of Bajirao with spade because of which his three teeth were dislocated.

11. PW 5 Dr. Khot had examined PW 4 Bajirao and PW 6 Maruti. He has described the injuries suffered by PW 4 Bajirao as under:-

. "1. Incised wound forehead 5x3 cms.
. 2. Incised wound left cheek, 15x4 cms.
. 3. Incised wound upper lip right side- 2 x 1 cms.
. 4. CLW right forearm upper 1/3rd 4x1 cms
. 5. Incised wound neck right side 10x3 cms
. 6. Incised wound left parietal region - 5x2 cms. Fractured left parietal bone.
. 7. Incised wound vertex 8x2 cms.
. 8. Incised wound left palm meadial aspect 6x3 cms. fractured 3rd and 5th

metacarpel bone.

. 9. Multiple abrasions 10 in nos. over - chest and abdomen.

. 10. Incised wound occipital region 4x1 cms.

. 11. Incised wound right pinna 4x2 cms.

. 12. Incised wound right occipital region - 5x1 cms.

. 13. Missing upper right canine and right 2nd pre molar tooth.

Dr. Khot found following injuries on Maruti:

. "1. Incised wound frontal region 8x2 cms. fracture frontal bone.

2. Contused lacerated wound left forearm middle 1/3rd 3x1 cms.

3. Incised wound left forearm and elbow upper 1/3rd 6x3 cms. fracture olecranol bone left side.

12. According to Dr. Khot some of the injuries caused to Bajirao and Maruti were grievous. It cannot be denied, therefore, that on 22/4/93, PW 4 Bajirao and PW 6 Maruti received serious injuries. It also cannot be denied that the incident had taken place in the field of Bajirao and Maruti. It

appears, therefore, that the accused came to the field of the prosecution witnesses being annoyed by the fact that a stone was hurled at Hirabai, the mother of PW 4 Bajirao. It is the case of the prosecution that Shivaji assaulted on the heads of Maruti and Bajirao with iron. However, this story cannot stand the scrutiny of the court. Baccharam the son of the deceased was tried in Juvenile Court. In that case PW 4 Bajirao did not state that Shivaji attacked him with iron bar. In fact there are no contused lacerated wounds on the heads of Maruti and Bajirao. Baccharam has stated that Shivaji had an axe with him which is a totally different version. Therefore, the story that deceased Shivaji attacked the prosecution witnesses cannot be accepted. PW 6 Maruti has stated in his evidence that while accused 5 Sanjay was attacking PW 4 Bajirao, Bajirao leaned forward and by mistake blow landed on the head of Shivaji, father of Sanjay. This explanation does not find place in the FIR, Exh.-23. It has come in the evidence of PW 6 Maruti for the first time. Therefore, it will have to be rejected. But even if it is accepted that PW 6 Maruti attacked Shivaji with an axe, as rightly stated by the learned Sessions Judge, there is nothing to indicate that the attack continued

thereafter. Therefore, there can be no justification for attacking Bajirao in such a manner so as to cause thirteen injuries to him.

13. Taking an overall view of the matter, in my opinion, the learned Sessions Judge has rightly concluded that accused 1 Rajaram dealt an axe blow on the neck of Bajirao, that accused 2 Bapu hit shovel on the face of Bajirao and accused 5 Sanjay dealt a blow with an iron bar on his right arm. The conviction of accused 1, 2 and 5 under Section 324, 326 and 323 of the Indian Penal Code respectively, therefore, cannot be faulted. However, the incident in question had taken place about 14 years back. I am informed by learned counsel for the appellants and learned counsel for the accused in counter case who are appellants in the counter appeal that there is peace in the area and if the appellants are sent to jail this distance of time that may be counter productive. There may be a breach of peace. In the circumstances, in my opinion, imprisonment already undergone by the appellants should be treated as sentence for the offences for which they are convicted.

14. Hence the following order:

. "Conviction of accused 1 Rajaram under Section 324 of the IPC is confirmed. Conviction of accused 2 Bapu under Section 326 of the IPC is confirmed. Conviction of accused 5 Sanjay under Section 323 of IPC is confirmed. Order of sentence passed by the trial court against accused 1 and 2 is set aside and substituted by the following:

. Imprisonment already undergone by accused 1 Rajaram and accused 2 Bapu shall be treated as sentence for the offences for which they are convicted. Sentence of fine imposed by the trial court on accused 5 Sanjay is confirmed.

. Appeal is disposed of in the aforestated terms.

JUDGE.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

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CRIMINAL APPEAL NO. 132 OF 1996

RAJARAM LAXMAN YADAV & ORS. .. APPELLANTS
(Org.Accused 1,2&5)

VERSUS

THE STATE OF MAHARASHTRA .. RESPONDENT

Mr. Rahul Kate for appellants

Smt. V. R. Bhosale, APP

**CORAM**: **SMT. RANJANA DESAI, J.**

**DATE**: OCTOBER 15, 2007.

OPERATIVE PART OF THE ORDER

. For the reasons stated in the oral judgment, this court has disposed of the appeal and passed the following order:

. "Conviction of accused 1 Rajaram under Section 324 of the IPC is confirmed. Conviction of accused 2 Bapu under Section 326 of the IPC is confirmed. Conviction of accused 5 Sanjay under Section 323 of IPC is confirmed. Order of sentence passed by the trial court against accused 1 and 2 is set aside and substituted by the following:

. Imprisonment already undergone by accused 1 Rajaram and accused 2 Bapu shall be treated as sentence for the offences for which they are convicted. Sentence of fine imposed by the trial court on accused 5 Sanjay is confirmed.

. Appeal is disposed of in the aforestated terms.

JUDGE.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**APPELLATE SIDE**

CRIMINAL APPEAL NO. 132 OF 1996

**DATE OF DECISION**:15/10/2007

Submitted for
approval.

**THE HON’BLE (SMT.) JUSTICE RANJANA DESAI:**

**THE HON’BLE SHRI JUSTICE :**

1. Whether Reporters of Local Papers be allowed to see the Judgment?

2. To be referred to the Reporters or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur, Aurangabad and Goa Offices?